Words, Even From Cabinet Secretaries, Cannot Repeal a Law

The War Powers Resolution is constitutionally grounded — not constitutionally suspect

By Angel Gómez | Submitted in a private, pro bono capacity

Secretary of State Marco Rubio told reporters at a White House briefing on Tuesday that the War Powers Act is "unconstitutional, 100 percent," and that the Trump administration is complying with "elements" of it only to maintain good relations with Congress. The remark, made as the U.S.-Israeli war on Iran sailed past its statutory 60-day deadline, was the most categorical executive-branch repudiation of the 1973 statute on record. It was also legally meaningless.

That second sentence is the one worth dwelling on.

In the space of four months, the country has heard the War Powers Resolution called "dubious" by the Speaker of the House, "fundamentally a fake and unconstitutional law" by the Vice President, a clock that "pauses or stops in a ceasefire" by the Secretary of Defense, and now "100 percent unconstitutional" by the Secretary of State. Between those last two formulations, the President himself wrote to congressional leadership on May 1 to declare that the hostilities that began on Feb. 28 "have terminated" – a one-paragraph attempt to end the WPR's 60-day clock by executive *fiat*, even as a U.S. naval blockade of the Strait of Hormuz remained in place.

Three days after that termination letter, the Pentagon launched Operation Project Freedom – a deployment of guided-missile destroyers, more than 100 aircraft, and roughly 15,000 service members to escort commercial vessels through the strait. Iran answered with cruise missiles, drones, and small-boat sorties. The operation was paused 24 hours later, with the blockade still in force. Hostilities, in other words, had not in fact terminated. They were merely being *relabeled*.

It is in this context – a statute being talked about as if speech alone could repeal it – that the central legal point needs to be stated plainly. Words from Cabinet officers, however senior, however emphatic, however many times repeated, cannot change the constitutional or operative status of a federal statute. The mechanisms by which a duly enacted law's force is altered are, by constitutional design, exactly four: repeal by Congress; invalidation by an Article III court on a properly developed record; constitutional amendment under Article V; or sunset by the statute's own terms.

None of the four has been engaged. No bill of repeal has been introduced. No court has invalidated the WPR's notification, 60-day, or 30-day extension provisions; courts have declined to reach the question, a posture that *preserves* the statute's force rather than nullifying it. No constitutional amendment is pending. The WPR contains no sunset clause. Therefore – as a matter of law, and

not as a matter of opinion – the War Powers Resolution remains in full operative force as of this writing.

The Department of State briefing room, with respect to the Secretary, is not a forum of legal interpretation. Truth Social is not the Federal Reporter. A press availability with the Vice President is not an opinion of the Office of Legal Counsel – and even an OLC opinion, while binding inside the executive branch, is not a judicial holding and may be revised by any subsequent attorney general. None of these venues alters the United States Code by a single syllable.

Rubio's claim that this position has been held by "every single president" since 1973 is overstated, and the overstatement is important here. Every administration since Carter has registered some form of executive-branch reservation about the WPR. None has previously taken the public posture that the statute's notification, 60-day, and 30-day provisions are nullities to be honored only as a matter of inter-branch courtesy. The historical pattern has been formal compliance combined with restrictive legal interpretation. Reagan reported under the WPR over **Lebanon**. Clinton reported under it over **Kosovo**. Obama submitted multiple WPR reports on **Libya**. President Trump himself complied with the notification requirement after the **Soleimani** strike during his first term. That is not the conduct of presidents who believed the statute void. It is the conduct of presidents who disliked the statute and complied anyway.

There is also an internal contradiction in the new line. If the WPR is "100 percent unconstitutional," then notification is not required – even as comity. Comity, in inter-branch practice, runs to constitutional duties: the principle that the executive will appear before legislative committees, for example, because the structure of the Constitution makes legislative oversight meaningful. Comity does not run to nullified statutes. To say "we extend comity to this statute" is to concede, *sotto voce*, that the statute is alive. The administration's May 1 termination letter, which itself uses the WPR's own statutory language about whether "hostilities" have ended, makes the concession explicit: it is *simultaneously* relying on the statute (to claim termination) and denouncing the statute as void (to deny it any operative force). Both positions cannot be true.

The constitutional case for the WPR is not even close. Article I, Section 8, Clause 11 gives Congress – not the President – the exclusive authority to declare war. The Necessary and Proper Clause empowers Congress to legislate in furtherance of that power and of the Commander in Chief power, ensuring that the executive's exercise of force remains within constitutional parameters. The WPR's 48-hour notification, 60-day clock, and privileged concurrent resolution mechanism are precisely the kind of structural guardrails that clause was written to authorize. As the National Constitution Center summarizes the consensus view, the Declare War Clause grants Congress an *exclusive* power, and presidents cannot, on their own, take the country to war.

Bipartisan voices across the current Senate have made the same point in plainer language. Sen. Tim Kaine (D-Va.), who has spearheaded six War Powers Resolution votes since the Iran war began, has argued that the President "must come to Congress before using military force unless absolutely necessary to defend the

United States from an imminent attack." Sen. Rand Paul (R-Ky.), the only Republican to vote yes on every Iran WPR measure, has been blunter: "Only Congress can declare war. That's not my opinion. That's Article I of the Constitution." On April 30, Sen. Susan Collins (R-Maine) crossed the aisle for the first time, stating that the WPR's 60-day deadline "is not a suggestion; it is a requirement." Even Republicans who have voted against the resolution – Lankford, Tillis, Young, Murkowski – have publicly conceded that the 60-day mark is legally significant and that an authorization vote is overdue. Sen. Murkowski has announced announced she will introduce a formal authorization for the use of military force when the Senate returns May 11.

If the public reception of these escalating executive declarations has been less critical than it should have been, part of the explanation lies, uncomfortably, within the legal academy itself. American legal education has long emphasized two skills: reading appellate opinions for holdings, and recalling doctrinal architecture well enough to pass a bar examination. Both skills are valuable. Both are also incomplete. They produce graduates who can identify what the law *says* without always being able to articulate what the law *means in operation* – and what the law requires of those who hold power.

A graduate who has memorized 50 U.S.C. § 1544(b) can recite the 60-day clock. A graduate who understands it can explain why the clock exists, what political failure produced it, what alternative architectures the Congress of 1973 considered and rejected, what classes of executive evasion the statute was built to anticipate, and why a press-conference declaration that the statute is "fake" cannot itself nullify it. The first graduate sees a number. The second sees a constitutional design. The country needs more of the second kind – not only in courtrooms, but in newsrooms, on Capitol Hill, and in the briefing room where the Secretary of State takes questions about a statute the executive branch has already been complying with for fifty-three years.

Three modest additions to the dominant law-school curriculum would help. Structural literacy – every J.D. candidate should leave constitutional law able to explain in plain English what the WPR, the Inspector General Act, FISA, the Impoundment Control Act, and the Posse Comitatus Act each prevent. The rhetoric-versus-law distinction – students should be trained to hear a Cabinet officer call a statute "fake" and immediately identify which of the four legal mechanisms for nullifying a statute is being asserted, whether it has been engaged, and why it cannot be engaged from a podium. And the longitudinal study of statutory durability – most constitutional law courses are organized around landmark cases; few are organized around landmark *statutes* and their fifty-year arcs through executive and judicial practice. A course on the WPR alone would teach more about how the U.S. constitutional system actually operates than several casebooks.

In Conclusion

The case against the WPR's constitutionality rests on a selective reading of the Commander in Chief Clause that the Founders themselves did not endorse. The case for it rests on the plain text of Article I, on Congress's explicit invocation of

the Necessary and Proper Clause when it passed the resolution, on the structural logic of checks and balances, on the absence of any judicial ruling invalidating it, and on a half-century of executive compliance with its notification and reporting requirements – including, awkwardly for the new executive-branch line, compliance the current administration acknowledges it is still extending today. What Speaker Mike Johnson, Vice President JD Vance and Secretary of State Marco Rubio are advocating is not a constitutional interpretation. It is a constitutional transformation – one that would convert the Founders' most carefully guarded restraint on executive war-making into a dead letter, by talking about it as though it already were one.

It is not. The 60-day clock has run. The naval blockade is still in place. Operation Project Freedom is paused, not terminated. The statute remains the law until repealed or invalidated, and it has been neither. Now would be a useful moment for the country's lawyers, lawmakers and editorial pages to say so – calmly, clearly, and on the record.

Epilogue

There is no shortage of fine words in Washington. The Congressional Record runs to millions of pages; libraries groan under the weight of constitutional scholarship. And yet here we are, six Senate votes deep on the Iran War Powers Resolution, all defeated along nearly identical party lines, with the deadline crossed and a Cabinet officer telling reporters the law is "100 percent unconstitutional." This is not primarily a failure of knowledge. It is a failure of attention — and of nerve. Every lawmaker reading this understands, at some level, that Article I places the war-declaration power in Congress. Most of them, in a quieter moment, would acknowledge that the 60-day clock exists for a reason. The constitutional grounding of the War Powers Resolution is not hidden. It is not esoteric. It is printed in the same document they swore an oath to support and defend. The libraries are full of fine words. The question before each lawmaker, and before the country, is the simpler and harder one: are we willing to act on what we already know?

Mr. Angel Gomez is a researcher specializing in the societal impact of government policies. He has a background in psychoanalytical anthropology and general sciences